

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 05-33117-WRS
Chapter 7

RONALD LEE BRETHAUER
KATHY S. BRETHAUER,

Debtors

MEMORANDUM DECISION

This Chapter 7 bankruptcy case came before the Court for hearing on November 28, 2006, upon the objections to the claim of Great America Leasing filed by Capital Bank (Doc. 50) and the Trustee. (52). Great America Leasing was present by counsel Jeffrey Hartley; Capital Bank was present by counsel Robert H. Adams; and Chapter 7 Trustee Daniel Hamm was present in person. Great America Leasing has filed an unsecured claim in the amount of \$41,511.72. (Claim No. 1), which is the subject of these objections. The Court heard evidence and the argument of counsel. For the reasons set forth below, the objections are OVERRULED and the Claim of Great American Leasing is ALLOWED AS FILED.

The Debtor owned and operated a hardware store. Great America Leasing installed custom software and hardware at the Debtor's place of business for use in the Debtor's business. The Debtor's business failed a short time after the hardware and software was installed. The Proof of Claim amount is simply the balance owed on the contract. Great America Leasing did not make any effort to retake and sell the installed hardware. Capital Bank was understandably chagrined that Great America Leasing did not take action to liquidate hard assets so as to reduce its claim. However, Great America Leasing offered the testimony of one of its managers who testified that most of the value was in software, which could not be resold and that the installed

hardware would cost more to retake and sell that would be realized. While this testimony is difficult to accept, it is not wholly unpalatable. Moreover, neither Capital Bank nor the Trustee offered testimony or evidence to the contrary. Therefore, the Court will overrule the objections to the claims of Great American Leasing.

The Court inquired of the Trustee whether he could sell the hardware in question. The Trustee replied that as it was leased property, it did not appear that he could. The Court finds, based upon the testimony offered by Great America Leasing that they have abandoned any interest they have in the hardware. The Trustee may proceed to sell the hardware free and clear of any interest of Great American Leasing as it would be inconsistent for them to proceed with their unsecured claim, unreduced by the value of the hardware, and yet maintain that they own the hardware. In other words, they can't have their cake and eat it, too. The Court will enter a separate order on the objections to claims.

Done this 17th day of January, 2007.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Daniel G. Hamm, Trustee
Jeffery Hartley, Attorney for Great American
Robert H. Adams, Attorney for Capital Bank